19 50. **File No.** O. Village Panchayats/50

Legal Department

A **BRANCH**

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12/7

Subject:— Opinions under the Bombay Village Panchayats Act, 1933

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File No. O. Village Panchayats/50

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Office of the R.L.A.

The Bombay Village Panchayats Act, 1933 section 89(2)(vii) read with s. 100(3) of the Government Of India Act, 1935 and entries 13 and 54 in List II of the Seventh Schedule.

Since the wells and tanks vest in the panchayats under section 28D subject to the condition that the water can be used even for purposes other than drinking purposes, it would be open to the panchayats to derive income from such properties under clause (b) or (i) of sub-section (2) of section 31 of the Act. Under sub-section (2) of section 89 of the Bombay Village Panchayat Act, 1933, it shall be competent to a panchayat to levy all or any of the taxes or fees specified in clauses (ii) to (vii) at such rates and in such manner and as may be prescribed.

Clause (vii) provides for any other tax (not being a toll or motor vehicles or trailers, save as provided in section 14 of the Bombay Motor Vehicles Tax Act, 1935) which the Provincial Government has under the provisions of the Government of India Act, 1935, power to impose in the Province and which has been approved by the District Local Board and sanctioned by the Provincial Government. Under section 89(2)(vii) read with 100(3) of the Government of India Act, 1935 and entries 13 and 54 of List II in the Seventh Schedule, it would be competent for the village panchayat to levy

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rates for water supplied. However, as pointed out in R.L.A's opinion No. 10813, dated the 27th September 1949, although section 89(2) of the Village Panchayat Act provides for levy of taxes or fees, in none those of the clauses thereunder is any item mentioned for levy of fees. The terms "taxes" and "fees" are not used as synonymous and unless provision is made in section 89(2) for levy of "fees", it does not appear that the village panchayat can charge fees for supply of water for irrigation or drinking purposes.

P.M.Iad

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o/c.

Remembrancer of Legal Affairs.

U.O. to H. & L.G.D.No. 617, dated the 14th January 1950.

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29/6.

Office of the R.L.A.

The Bombay Village Panchayats Act, 1933.

Section 23(2) of the Bombay Village Panchayats Act, 1933, which provides for the filling up of casual vacancies will have no application. Under the proviso to section 17(2) the President of the District Local Board could convene a fresh meeting and nominate one of the members to preside at the meeting so convened (see the latter part of the proviso and R.L.A's opinion No. 12402, dated 3rd November 1949). Consequently the nomination by the President of the District Local Board of the Chief Officer to preside at the meeting convened by him was illegal. The Collector should therefore set aside the election of the Sarpanch at the meeting presided over by the Chief Officer and direct the President of the District Local Board to convene a fresh meeting and to nominate one of the members to preside at it.

P.M.Lad
24/2.
o/o.
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.W.D. No.2734, dated the 25th February 1950.

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20/6.

C.D.R.I.No. 945/50.

* slip A below

In accordance with the instructions contained in G.R. H & L.G.D. No. 2565/33 dt. 20.1.48, panchayats were constituted in the villages of Jamner, Pahur and Neri. Subsequently, however, in exercise of power conferred by cl.(a) of sub-section (2) of sect. 4, of the Bombay V.P.Act, Govt. added certain deserted villages within the said three villages (vide H & L.G.D.Notifns. Nos. 5568/33(a) 5568/33(b), and 5568/33(c) dt. 15.7.49). The Commr. C.D. states that the inclusion of the deserted villages has not affected the populations of the villages of Jamner, Pahur and Neri and consequently, it is not necessary to dissolve the existing village panchayats and to reconstitute them. The H & L.G.D. holds that the Collr's. action under sect. 103(1) of the Bom. V.P.Act is discretionary and it is not obligatory upon him to dissolve and reconstitute a village panchayat if it is not found expedient to do so. R.L.A. is requested to advise whether the H.& L.G.D. office view is correct.

pp.351,357 &-363 of file 5568/33 Pt. XV.

29/6.

Office of the R.L.A.

Seen and returned.

2. The view taken by Health and Local Government Department is correct.

P.M.Ind.
20/1.
o/c
Remembrancer of Legal Affairs.

U.R.to H. & L.G.D., No. 1213, dated the 25th January 1950.

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20/1.

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Office of the R.L.A.

Bombay Village Panchayats Act, 1933.

Section 9(1).

The words "any irregularity has been committed" in section 9(1) of the Bombay Village Panchayats Act, 1933 may cover cases of any mistake in counting votes and consequently it would be competent for the Collector to scrutinise and compute votes recorded in favour of each candidate anddeclare as invalid the election of the candidate provided that on such scrutiny and compulation he is not found to have obtained the highest number of votes; but looking to the wording of that section it may not be competent for the Collector to declare as elected the other candidate who as a result of scrutiny is found to have obtained the highest number of votes. Such power appears essential.

Considering the body to which the elections are to be held and the costs involved in a regular judicial inquiry it appears undesirable to provide for a judicial inquiry There would however be no objection to amending section 9(1) on the lines of section 15(3)(b) of the Bombay Municipal Boroughs Act, 1925 empowering the Collector for the purpose.

P.M.Lad. 3/2.

Remembrancer of Legal Affairs.

U.R.to H.& L.G.D.No.1612, dt. the 4th Feb.

Office of the R.L.A.

Bombay Village Panchayats Act, 1933. Amendments of section 33(2).

The words "such Secretary" in sub-section (2) of section 33 of the Bombay Village Panchayats Act, 1933 would indicate that Government's liability to pay three-fourths of the salary would arise only if the Secretary is appointed in conformity with the provisions of sub-section (1) and not otherwise; for, any appointment which is contrary to these provisions is in law no appointment at all. Consequently the amendment of section 33 as suggested in the margin at page 13 ante does not appear necessary and Government would be competent to refuse to pay its contribution under sub-section (2) if the Secretary appointed by the Village Panchayat is not found to possess the prescribed qualifications. However, if Department feels that the legal position should be put beyond the scope of any misunderstanding of the true legal position, the amendment may be made. The form of the amendment will be settled after it is decided to promote it.

P.M.Lad.
-18/3.
o/c.
Remembrancer of Legal Affairs.

U.R.to L.S.G.& P.H.D.No. 3909,dt. the 20th March 1950.

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20/3.

L.E.R.I.No. 3004/50.

pp. 29-30. ante.

The facts are stated in the letter from the Collector of East Khandesh No. P.C.H. 2732 dated 7-11-49. As payment of house-tax was due from Mr. Bavaskar, a bill was sent to him on 18-1-49 as required by Sect. 91(1) of the Bombay V.P.Act, to pay the arrears within seven days from the receipt of the bill. Mr. Bavaskar, however, did not pay the arrears until 30-4-49. The general elections of the Village Panchayat Chohardi, took place on 6-6-49 and Mr. Bavaskar was declared duly elected. On 21-6-49 one Mr. Patil applied to the Collector, East Khandesh for setting aside Mr. Bavaskar's election on the ground that he was disqualified for having committed a default in payment of the house-tax. The application was sent to the Prant Officer, Amalner Division, who declared Mr. Bavaskar to have been disqualified for failure to pay the bills. Being aggrieved by the said order, Mr. Bavaskar has applied to the Collector for revising the order.

The question is that since Sect. 9(1) gives finality to the order, it would be permissable for the Collector to revise the order of the Prant Officer under Sect. 107(2) of the Act.

Office of the R.L.A.

The Bombay Village Panchayat Act, 1933.- Section 9(1).

The election of Rangopal being illegal, it would be competent for the Prant Officer to declare his election to be invalid under section 9(1) of the Bombay Village Panchayat Act, 1933 provided he is exercising the powers of the Collector by virtue of ~~xk~~ delegation under section 112(5).

P.M.Lad.

23/3

o/c.

Remembrancer of Legal Affairs.

U.R. to L.S.G.& P.H.D. No. 4105 .

dated the 24th March 1950.

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29/6.

Office of the R.L.A.

Under section 29 of the Bombay Village Panchayats Act 1933 every panchayat shall be competent to do all other things necessary for the purposes of the Act. Sections 26, 26A, 27, 28 and 28A which specify the various purposes do not contain a provision on the lines of section 56(m) of the Bombay District Municipal Act 1901 section 71(s) of the Bombay Municipal Boroughs Act, 1925, and section 50(o) of the Bombay Local Boards Act, 1923, enabling the village panchayat to make provision for any public reception, ceremony or entertainment. Under section 32 of the Act, all property vested in the panchayat and all fees received by it in accordance with the provisions of the Act shall be applied only for the purposes of the Act. It follows, therefore, that the provisions of the Act do not authorise expenditure upon purposes of a reception or a ceremony It is well settled law that where a corporation is created by a stature, its powers are limited and are circumscribed by the statute creating it and extend no further than is expressly stated therein or is necessarily and properly required for carrying into effect the purposes of its incorporation or may be fairly regarded as incidental to or consequential upon those things which the Legislature has authorised. What the statute does not expressly or impliedly

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authorise is to be taken as prohibited. Halsbury's Laws of England, 2nd Hailsham Edition, Vol.8pp.72-73. The application of the village fund in respect of the aforesaid purposes cannot be regared as incidental to or consequential upon the purposes which the Legislature has authorised. In fact it has been held that unless permitted by statute, a corporation cannot spend moneys for entertaining distinguished persons or o thers. (R.V.Corporation of Sunderland (1878) Times, and R.V.Corporation of Bideford (1883) 47 I.J.P. 756 quoted at p. 223 of Aiyangar's Law of Municipal Corporation.)

2. For those reasons the view expressed by the Secretary, L.S.G. & Public Health Deptt., in his note dated 28-2-1950 is correct.

P.M.Iad.
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O.O.

Remembrancer of Legal Affairs.

U.R. to Secy. L.S.G. & P.H.Deptt., No.3049, dated 3rd March 1950.

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Office of the R.I.A.

Reading rules 10 and 12 of the Bombay Village Panchayats Election Rules, 1948, it appeats clear that the returning officer is to decide on any objection to the nomination paper and his decision, if against the objection is final; but if in favour of it, is subject to reversal on an appeal to the Collector or the officer appointed by the State Government under rule 13. To provide for power of the returning officer to revise his own order in cases where he has accepted the nomination paper, is likely to lead not only to legal complications but also to destroying the confidence of the electors in the impartiality of the returning officer (cf. R.V.Taylor 1895, 59 J.P.393; Rogers on Elections Vol. II, p. 102). It would not therefore be advisable to give revisional power to the returning officer. If necessary, the Bombay Village Panchayats Election Rules may be amended vesting such revisional power in the Collector or the officer authorised by Government subject to the condition that no such power can be exercised in cases where the candidates are declared under rule 14 by the returning officer elected without any votes being recorded.

Con td.

P.M.Lad.
9/2.

Remembrancer of Legal Affairs.

U.R. TO L.S.G.& P.H.D.No. 1969, dated the 10th Feb. 1950.

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30/6.

Office of the R.L.A.

Section 9(1) of the Bombay Village Panchayats Act, 1933, becomes applicable when the Collector issatisfied that any member has been elected in contravention of the provisions of section 8 or that any corrupt practice or irregularity has been committed in connection with such election, and that such illegality, corrupt practice or irregularity has materially affected the result of the election. The juxtaposition of corrupt practices with irregularity in the context of sub-section (2) makes it clear that the irregularity must have been committed during the election. An election can begin only after the list of voters is finalised, which is apparent from rule 8 of the Bombay Village Panchayats Election Rules, 1948. By 'election' we generally mean the act of casting and receiving ballots, counting them and making the return. Any irregularity in the preparation of the voters' list, the finality of which is provided for in the Rules, cannot be treated as an irregularity in connection with the election. Moreover, it is doubtful whether the particular irregularity has materially affected the result.

2. In my opinion, therefore, Section 9(1) cannot be invoked in the present case.

P.M.Lad. 25/4.
Remembrancer of Legal Affairs.

U.R. to L.S.G.& P.H.Deptt. No.5682,dt. the 26th April 1950.

MM30/6.

Office of the R.J.A.

Bombay Village Panchayats Act, 1933.

Section 89(2) and (2A).

Sub-section (2A) of section 89 of the Bombay Village Panchayats Act, 1933 reads as follows :-

"Notwithstanding anything contained in sub-section (2), every panchayat shall levy any one of the Taxes Specified in sub-section (2) as may be prescribed in regard to the panchayat."

It is obvious from the word "specified" used in the above sub-section that only those taxes which have been named or expressly mentioned in sub-section (2) of section 89 can be prescribed for the purposes of sub-section (2A). In clauses (i) to (vi b) of sub-section (2) certain taxes have been specified. No particular taxes are specified in clause (vii) cannot be prescribed under sub-section (2A). The view taken by the Commissioner, Northern Division, in this respect is, therefore, correct.

P.M.Lad.
6/4.

o.c.

Remembrancer of Legal Affairs.

U.R.to L.S.G.& P.H.D.,No.4765, dated the 8th April 1950.

MM 30/6.

Office of the R.L.A.

Bombay Village Panchayats Act, 1933. Section 9(1). Bombay Village Panchayats Election Rules, 1948.

It is true that the order passed by the Prant Officer rejecting the nomination papers of Siddappa Bidari and Hanmant Bidari, be it under section 9(1) of the Bombay Village Panchayats Act or under the Bombay Village Panchayats Election Rules, 1948, was clearly illegal. But it is admitted that these two persons were not qualified for the seat reserved ffor the Backward Classes on the Panchayat Committee. Consequently, even if th their nominations as accepted by the Mamlatdar were allowed to stand, the election ultimately would have been required to be cancelled under section 9(1) of the Bombay Village Panchayats Act. Since what would have necessarily been required to be done has been achieved by rejecting the nomination papers by the Prant Officer, and since it appears that the election to this reserved seat has been already held and presumably the member has taken his seat, no action at this stage would be legally possible; for it is the general principle that a person de facto in possession of an office is presumed to be rightly in possession until the contrary is established by due course of law (See Halsbury Vol. 8, p. 34)

Contd.

P.M.Lad.
18/4.

Remembrancer of Legal Affairs.

U.R. to L.S.G. and P.H.D., No. 5303, dated the 19th April 1950.

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30/6.

Office of the R.I.A.

Bombay Village Panchayats Act,-1933. Section 28-B.

A road cannot be said to be the property of Government merely because it is used by the public; such street lands as belong to the Thakore Saheb would continue to belong to him subject to the rights of the public to pass and repass (See 43 Bom. L.R.p. 107). Consequently in view of clause (c) of the R.D. Notification No. 3482/49, dated the 29th December 1949 and section 28-B of the Act it would not be legally competent for Government to vest in the Panchayat the subsisting rights of the Thakore Saheb over the public roads.

P.M.Lad.
15/5.
o/c.
Remembrancer of Legal Affairs.

U.R. to R.D., No. 6660, dated the 16th May 1950.

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30/6.

The delegation by the Collector under Sec. 112(5) of the Bombay Village Panchayat Act, 1933, is distinct from and independent of the appointment of an officer by the Provincial Government under section 95(3) to exercise such of the powers and perform such of the duties of the Collector as may be prescribed by rules made under clause (q) of section 108(1). It is, therefore, legally competent to Government to appoint a Mamlatdar to exercise the powers and perform the duties assigned to the Collector not only under the Bombay Village Panchayat Rules but so assigned by the provisions of the Act itself. The Additional Secretary's advice in his Opinion No.II.& L.G.D.No. 9049 dated the 23rd September 1948 was based upon that view and that advice has been given effect to by amending the preamble of the Rules. Moreover, the only duties assigned to the Collector under section 7 are those of appointing the date for holding the election and of deciding the disputes under sub-section (3) thereof. There is thus in law no conflict between the delegation under section 112(5) and the amendment whereby the Mamlatdar was substituted for the Collector in the Rules.

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2. However, the intention of section 112(5) does seem to be that the powers etc., of the Collector should not be delegated to an Officer lower in rank than an Assistant or Deputy Collector. It is, therefore, a matter of policy for Government to consider whether the powers intended to be exercised by the Collector under the Rules should be transferred to the Mamlatdar. If Government decide to adhere to the policy of transferring such powers to the Mamlatdar it may seem more expedient in the interest of consistency to substitute the Mamlatdar for the Assistant Collector or Deputy Collector in section 112(5).

P.M.Lad.

15/5.

o/c.

Remembrancer of Legal Affairs.

U.R.to L.S.G.& P.W.D.No. 6719, dated the 17th May 1950.

30/6.

Office of the R.L.A.

Bombay Village Panchayat Act, 1933. section 37(2).

The view taken by the Secretary, Local Self-Government and Public Health Department, is correct.

Under section 37 of the Bombay Village Panchayats Act, 1933, as it stood before it was substituted by Bombay Act XVIII of 1939, it was entirely within the discretion of Government to constitute a village bench for a Panchayat, but under section 37 which has now been substituted for the old section by the aforesaid Act, every panchayat is required to constitute a nyaya panchayat and under sub-section (2) Government may direct that such nyaya panchayat may exercise all or any of the judicial powers which may be conferred on the nyaya panchayat under this Act. The constitution of a nyaya panchayat bein now obligatory, conferment of no judicial powers on the nyaya panchayat would render the constitution itself nugatory. Consequently, some judicial powers, if not all, will have to be conferred on a nyaya panchayat under section 37(3).

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P.H.Lad.
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O.C.

Remembrancer of Legal Affairs.

U.R.2to L.S.G.& P.H.D.No. 4574, dated the
4th April 1950.

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30/6.

Office of the R.L.A.

As pointed out in R.L.A's opinion No. 10813 dated 27th September 1949, sub-sections (2) and (3) of section 89 of the Bombay Village Panchayat Act, 1933, was the words "taxes or fees" in contradistinction, and, therefore, although the word "tax" as defined in the Act is wide enough to include other impost, it could not be extended to include a fee, regard also being had to the eiusdem generis rule. The distinction between a tax and a fee is not merely a distinction of words but is based upon the substantial difference between the nature and purpose of the impost which governs it s quantum also. For this reason the expression "any other tax" occurring in clause (vii) of sub-section (2) of section 89 of the Act cannot be so interpreted as to include a fee therein. With a view to make rule 34 strictly intra vires and to bring it in line with the provisions of section 89, the proper course would, therefore, be to include in the list given in sub-section (2) an entry relating to fees on markets and fairs. See entries 28 and 66 in List II(State List) of the Seventh Schedule of the Constitution of India.

P.M.Nad. 2/3.
Remembrancer of Legal Affairs.

U.R.to Local Govt. & Public Deptt. No.3046 dated 3rd March1950
MM 30/6.

Office of the R.L.A.

Bombay Village Panchayats Act, 1923.
Sec. 8(h)
Amendment of.

The view taken by the Commissioner that the Sarpanch cannot be disqualified under section 8(h) of the Bombay Village Panchayat Act is correct. It appears necessary to belong that provision in line with section 4(1)(c) of the Bombay Local Boards Act, 1923. However, as in the present case the Sarpanch presided over the meeting at which his own son was appointed secretary to the Panchayat and he himself moved the resolution in respect of it and it would amount to misconduct for which he can be removed from his office under section 21 of the Bombay Village Panchayats Act.

P.M.Lad.
11/7.

O.C.

Remembrancer of Legal Affairs.

U.R. to L.S.G.& P.W.D.No. 0757
dated the 11th July 1950.

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30/6.

Office of the R.L.A.

The Bombay Village Panchayats Secretaries (Conditions of Service) Rules, 1948.

Grades of Panchayts.

The view taken by Local Self Government and Public Health Department is correct. The grades ~~of Panchayats~~ of Villages Panchayats will have to change according to their annual income of the preceding year. This is implied in the Bombay Village Panchayats Secretaries (Conditions of Services) Rules, 1948.

P.M.Lad.
18/7.
O.C.
Remembrancer of Legal Affairs.

U.R. to L.S.G.& P.H.D. No.10162, dated the 19th July 1950.

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30/6.

Office of the R.L.A.

Bombay Village Panchayats Act, 1933:
Secs. 8(1) and 23(1)

The view taken by the Secretary, L.S.G.& P.H.D., that the breach of clause (1) of section 8 of the Bombay Village Panchayats Act, 1933, envolves no permanent disqualification and that unlike the provisions of the Bombay Fidytiey Municipal Act, 1901, and the Bombay Minicipal Boroughs Act, 1925, the Bombay Village Panchayats Act, disqualifies a person even to become a member by reason of his failure to pay the tax or fee due to the Panchayat within the specified time, is correct.

In the present case Shri A.H.Patel was appointed to the vacancy under proviso to section 23(1) of the Bombay Village Panchayats Act, 1933, by the Standing Committee of the District Local Board. Under that provision the Standing Committee could appoint a person who would have been qualified to be elected. Since Shri A.H.Patel had failed to pay the tax due to the Panchayat he was not qualified to be elected. Consequently, the appointment made by the Standing Committee of Shri A.H. Patel was ab initio void, and since the period of four vests has already expired, it would be competent for the Collector to make a fresh appointment to the vacancy ignoring the appointment already made by the Standing Committee,

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and in so appointing there would be no legal objection to considering the claim of Shri A.H.Patel.

P.M.Lad
22/7
O.O.

Remembrancer of Legal Affairs.

U.R.to L.S.G.& P.H.D.No. 10389,
dated the 22nd July 1950.

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30/6.

Bombay Village Panchayats Act, Act, 1933; sec. 9(1).

Bombay Local Authorities Adult Franchise and Removal of Reservation of Seats Act, 1950.

Setting aside general election.

General elections to the village panchayats in the villages of Betawad, Sindkheda and Dondaicha of the West Khandesh District have been held on the basis of their old constitutions even after the Bombay Local Authorities Adult Franchise and Removal of Reservation of Seats Act, 1950, came into operation. The question raised for the R.L.A.'s consideration is whether these elections can be set aside by the Collector under section 9(1) of the Bombay Village Panchayats Act, 1933, or whether action either undersection 102 or under section 107 would legally feasible.

As observed by Secretary, L.S.G.& P.H.D neither section 102 nor section 107 of the Bombay Village Panchayats Act, 1933, can be recorded to for the purpose.

Under section 9(1) the Collector is empowered to declare the election of any member invalid if he is elected in contravention of the provisions of section 8 or any corrupt practice or irregularity has been committed in connection with such election. The provisions of section 8 have not been contravened at all, nor has there been any question of corrupt practice. "Irregularity" is a comprehensive term including all formal objections to practical proceedings. It is defined to be the want of adherence to

Contd.

some prescribed rule or mode of proceeding. (See Iyer's Law Lexicon). In the present cases, in view of the fact that the Bombay Local Authorities Adult Franchise and Removal of Reservation Seats Act, 1950, has already come into operation, no election could be validly held without revising the constitution of the panchayat in accordance with the new Act. Consequently, the general elections held to the aforesaid three panchayats can be said to be irregualr in the sense that these elections under the old constitution were not in accordance with the provisions prescribed by the new Act. Theword 'any' may have one of several meanings according to circumstances. It may mean all, each, every, some or more out of several (Amc Cy.) "the election of <u>any member</u>" in section 9(1) may, therefore, mean even the election of all members at the general election. Consequently, there appears no legal objection to the Collector setting aside these general elections under section 9(1) of the Bombay Village Panchayats Act.

P.M.Lad.
25/7.
O.C.

Remembrancer of Legal Affairs.

U.R.to L.S.G. & P.H.D.No. 10550, dated the 26th July '50.

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30/6-

Office of the R.L.A.

Bom.Village Panchayats Act, 1933.
House Tax Rules of Village Panchayats-
Athwa Village Panchayat-
Suit against.

The grounds on which the levy of the property tax on the capital value is challenged by the plaintiff are not clear. However, the suit is prima facie defensible and there would be no objection to making the Services of the District Government Pleader available for defending the suit provided the Panchayat is willing to pay his fees and costs as prescribed by the Bombay Law Officers (Conditions of Service) Rules.

P.M.Lad
29/7.

O.C.

Remembrancer of Legal Affairs.

U.R.to L.S.G. & P.H.D.No. 10804 dated,
31st July 1950.

MM
30/8.

Office of the R.L.A.

From the terms and conditions of employment at page 13 ante it appears that Shri Shantarambhai is a servant of Government though not a full time servant. Consequently he would be disqualified under Section 8(j) of the Bombay Village Panchayat Act, 1933.

P.N.Lad.
O.O.
Remembrancer of Legal Affairs.

U.R.to L.S.G.A P.N.D.No. 15493 dated
6th November 1950.

MM
230/6.

Office of the R.L.A.

Bombay Village Panchayats Act, 1933.

Section 33(1) & (3).

The question raised in this case is whether section 33(3) of the Bombay Village Panchayats Act applies even to temporary secretaries who were appointed prior to the coming into operation of the Bombay Village Panchayats (Amendment) Act, 1947, irrespective of their qualifications. The Secretary, L.S.G. & P.W.D., is of the opinion that section 33(3) applies to persons who were acting temporarily in clear vacancies and not those who were only acting in leave vacancies. R.L.A. is requested to advise.

Section 33(1) of the Bombay Village Panchayats Act, 1933, provides :

> " Every panchayat shall appoint a Secretary who shall be a servant of the panchayat. His qualifications, powers, duties, remuneration and conditions of service shall be such as may be prescribed. "

Sub-section (3) provides that every secretary of a panchayat in office on the date of the coming into operation of the Bombay Village Panchayat (Amendment) Act, 1947 shall be deemed to have been appointed under sub-section (1). Reading these provisions together, it is apparent that a secretary of the panchayat in office on the date of the coming into operation of the Bombay Village Panchayats (Amendment) Act, 1947, would be deemed to be

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to possess the necessary qualifications as prescribed even though in fact he did not possess them. The term "office" denotes a duty in the office holder to be discharged by him as such. It consists in a right and corresponding duty to execute a public or private duty and to take the emoluments belonging to it (See Iyer's Law Lexicon). "Office" as defined by Cowell is a function by virtue whereof a man has some employment in the affairs of another. Webster defines it to be duty, charge or trust. C.J.Marshall says: "He who performs the duties of a public office is an officer. The individual who is invested with the authority andis required to perform the duty incident to an office is an officer." The though running through every definition of an officer is that he shall perform some services or owe some duty to the Government, State or municipal corporation and not merely to those who appoint or elect him. His tenure must be defined, fixed and certain and not arising out of mere contract of employment (see Iyer's Law Lexicon, p. 902). The appointment of an officer would, therefore, appear to contemplate the fixation of the tenure of the post to which he is appointed.

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"Every secretary of a panchayat in office" in sub-section (3) of section 33 would, therefore appear to mean every secretary of a panchayat whose tenure of office is fixed. A Person who has been acting as secretary of a panchayat temporarily without his tenure of office, that is to say, his term of office, fixed would not appear to fall within the scope of section 33(3). Consequently, those persons who were secretaries of the Panchayats and whose tenure of office was fixed, that is to say, those only who were holding the post for a definite period and not temporarily in leave vacancies or even in clear vacancies without any fixity of tenure would be saved by sub-section (3) of section 33.

P.M.Ind.
19/8.
o/c.
Remembrancer of Legal Affairs.

U.O.to L.S.G.& P.H.D.No. 11865 dated
21st August. 1950.

MM
30/8.

Office of the R.L.A.

It appears that general elections to the village Panchayat, Mohadi, District Nasik, were held but the Prant Officer set aside those elections on the ground that there were serious irregularities committed in the elections. One of those irregularities is that the lists were not prepared ward-wise and consequently the elections which were held not wardwise were void. Relying on the R.L.A.'s opinion No. 5682 dated 26th April 1950, the L.S.G. & P.W.Department considers that the order of the Prant Officer was not correct and hence it should be set aside. The R.L.A. is requested to advise whether the view taken by that Department is correct, and if so, whether Government can set aside the order of the Prant Officer under section 107A of the Bombay Village Panchayats Act.

It is true that in his opinion No. 5682 dated the 26th April 1950, the R.L.A. opined that any irregularity in the preparation of the voters' list the finality of which is provided for in the rules cannot be treated as an irregularity in connection with the election and consequently section 9(1) of the Bombay Village Panchayats Act, 1933, would not be available for setting aside an election where such irrregularity in the preparation of the voters' list has been committed. But that opinion is distinguishable. In the present case admittedly the voters' list was not prepared ward-

wise which is clearly in contravention of Rule 3(2) of the Bombay Village Panchayats Election Rules, 1948. When the electoral roll was not prepared ward wise, it is not understood how the elections at all were held. Prima facie, therefore, the election itself was entirely void. Although this kind of irregularity which vitiates the whole election may not be strictly covered by section 9(1) of the Bombay Village Panchayats Act, such election, being ab initio void, cannot be allowed to stand and on the principle that an act which is illegal or void need not be declared as such and can be ignored, the election in the present case could be considered as no election at all and ignored. Even if the Prant Officer had not set aside the election, it would have been necessary so to do by resorting to section 107A of the Bombay Village Panchayats Act. In the circumstances, the order of the Prantt/ Officer need not be disturbed and steps may be taken to hold fresh elections.

As observed by the Hon'ble Minister for Local Self Government, it appears desirable to amend section 9(1) of the Bombay Village Panchayats Act to obviate smoch difficulty.

P.M.Lad. 18/9

O.O.

Remembrancer of Legal Affairs.

U.R.to L.S.G. & P. U.D.No. 13362, dated the 20th September 1950.

MM 2/7

R.J.No. 17660 dt. 26-9-50.

Submitted.

2. The village of (1) Banashendra, (2) Chapander, (3) Chikhalathan, and (4) Hatabur, in the Chalisgaon Taluka of the East Khandesh District which were declared "villages" under section 4 (1) of the Bombay Village Panchayats Act, 1933 (vide G.N.,H.& L.G.D.No. 5568/33 dated the 5th January, 1950) have been included in and form part of Hyderabad under the India and Hydesbad the L.S.G. & P.H.D. considers that the Act would cease to apply to them and therefore it would not be necessary to exclude them from the notification dated the 5th January , 1950.

Slip p. 81 in case pps.

Slip B in Gazette of India Extra/50(p.443Ac).

The R.L.A. is requested to advise.

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2/7.

L.D.R.I.No. 15558
21-8-50

Submitted.

2. Please seee the leter No. P.C.H.1507 dt. 22-6-50 of the C ollector of E.K. (at p.1.ante).

It appears that the Village Panchayats of Kurha and Anthakit Pota Edlabad contributed an amount of Rs.15/- each towards the Flag day celebrations duringxxx and it to thes expenditure since it was not covered by the authority vested in the Village Panchayat under the V.P.Act, 1933. Since the Collections have already been sent to the Flagday Committee, Ministry of Defence, New Delhi, the question of regularising the said expenditure has arisen.

R.L.A. is requested to advise as to who has the power to waive the audit objection in respect of the irregular expenditure x in the present case.

2/7.

Office of the R.L.A.

It is true that as a rule a person de-facto in possession of an office is presumed to be rightly in possession until the contrary is established by due course of law, but in the present case the member who have been elected under the old constitution cannot be deemed to have been duly elected members to entitle them to take office since their election itself is vois ab initio. Consequently, it is not necessary to have their election set aside by due course of law. The general rule as stated by the Director of Local Authorities will hot therefore apply to the present case and it si not necessary that these members should be unseated by due course of law. Their election being void the Collector should formally so declare it and proceed to hold fresh elections under the revised constitution. Until the new body comes into office the old body under the old constitution which was in office before the present body assumed office should be asked to carry on the administration.

P.M.Ind. 7/12.

Remembrancer of Legal Affairs.

U.R.to L.S.G. &P .H.D.NO. 17418,dt.8thDec. 1950.

MM 2/7.